

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 21.04.2017

CORAM

THE HON'BLE MR. JUSTICE M.V.MURALIDARAN

CRL.O.P.No.9635 of 2011
and
M.P.No.1 of 2011

N.Muthukrishnan

.. Petitioner

Vs

1.The Protection Officer,
Domestic Violence Act,
District Welfare Office,
District Collector's Office Complex,
Singaravelan Maaligai, 8th Floor,
Rajaji Salai, Chennai 600 001.

2.S.Meenakshi

.. Respondents

PRAYER: Petition filed under Section 482 of the Code of Criminal Procedure, to call for the records relating to the notice Na.Ka.No.4993/Ku.Va./2010 dated 28.12.2010 and quash the same.

For Petitioner : M/s.Uma Vijayakumar

For Respondents : Mr.B.Ramesh Babu
Government Advocate
(Criminal Side) (for
R1)
No Appearance - (for
R2)

ORDER

This criminal original petition is preferred by the petitioner against the notice issued by the 1st respondent / Protection Officer, Domestic Violence Act Chennai in Na.Ka.No.4993 /Ku.Va / 2010 dated 28.12.2010 and quash the same.

2.Brief case of the Petitioner:

The facts of the case is that the petitioner was married with the 2nd respondent on 4.4.1988 at Madras, after the marriage the couple lived together in the petitioner's house at Tuticorin for a brief period of three months. The respondent left the matrimonial home once and for all in the year 1990 on her own accord and had no contact with the petitioner thereafter. The respondent neither made any attempt to call the respondent back to the marital house nor to maintain. But the respondent approached the petitioner along with family members and well wishers, but the petitioner purposely reused to take back to the family with some ulterior motives. In the year 2001 (after a period of 11 years) the respondent filed O.P.No.825 of 2001 for Divorce and I.A.1389 of 2003 for interim maintenance against the petitioner and separate maintenance case is also pending in M.C.No.586 of 2005. The learned judge ordered for interim maintenance and E.P.No.22 of 2009 for the arrears of maintenance filed by the 2nd respondent wife and E.A.No.2 of 2010 was filed by the petitioner to stay the E.P. The learned judge dismissed the E.A.No.2 of 2010 on 27.01.2010. Against this order, the petitioner filed C.R.P. in No.1490 of 2010 and the arrears were deposited in the court. In the meantime, the petitioner received notice on 5.1.2011 from the 1st respondent. Aggrieved over the same, this quash petition is filed.

3.The learned counsel for the petitioner submits that the petitioner is the husband of 2nd respondent. The 2nd respondent filed a divorce petition and the same was decreed on 15.11.2005 by the learned Principal Judge Family Court at Chennai and hence the Domestic Violence Act is not attracted.

4.The learned counsel for the petitioner submits that the 2nd respondent abandoned the matrimonial home in 1988 itself. As stated above, the 2nd respondent filed for Divorce after 11 long years of separation on the false grounds of cruelty and divorce was granted on that ground. Once the divorce is granted between husband and wife, as per law and it is my absolute view that the provisions of the Domestic Violence Act is not attracted.

5.The learned counsel for the petitioner submits that the petitioner states that the 1st respondent has issued the notice without applying her mind to the facts of the case. The 1st respondent has failed to see that the

Domestic Violence Act will apply only to the husband and wife or to persons living in a relationship and not to divorced persons and much less to couples who have been separated 22 years back.

6.The learned counsel for the petitioner submits that the petitioner states that this act of the 2nd respondent clearly shows that she is only interested in harassing and maligning the name of the petitioner. The 2nd respondent wants to extort money from the petitioner by any means and this court has to put a stop to such vexatious behavior of the 2nd respondent.

7.The learned counsel for the petitioner submits that the 2nd respondent has resorted to proceedings under the Domestic Violence Act only as a counter blast to the petition filed by the petitioner to summon her employer before court to prove that the 2nd respondent has been gainfully employed. The 2nd respondent has obtained interim maintenance by falsely alleging before the Family court that she was unemployed and had no means of earning for living when 2nd respondent was actually gainfully employed. Fearing that 2nd respondent has filed this frivolous petition only to try to dissuade the petitioner from summoning respondent employer to court.

8.The learned counsel for the petitioner submits that the continuation of the proceedings before the 1st respondent in Na.Ka.No.4993/Ku.Va/2010 dated 28.12.2010 is an abuse of the process of the court. No prejudice will be caused to the 2nd respondent if the records are called for and to quash the proceedings as against the petitioner.

9.The learned Government Advocate appearing for the 1st respondent opposed the contentions of the petitioner/accused and sought for dismissal of the criminal original petition.

10.I heard M/s.Uma Vijayakumar, learned counsel for the petitioner and Mr.B.Ramesh Babu, learned Government Advocate (Criminal Side) for the 1st respondent and perused the entire materials available on record. Even after receipt of the notice, the 2nd respondent has not appeared and hence, there is no representation for the 2nd respondent.

11.The 2nd respondent abandoned the matrimonial home in 1988 itself. As stated above, the 2nd respondent filed for Divorce after 11 long years of separation on the false grounds of cruelty and divorce was granted on that ground. Once the divorce is granted between husband and wife, as per law and it is my absolute view that the provisions of the Domestic Violence Act is not attracted.

12.The 1st respondent has issued the notice without applying her mind to the facts of the case. The 1st respondent has failed to see that the Domestic Violence Act will apply only to the husband and wife or to persons living in a relationship and not to divorced persons and much less to couples who have been separated 22 years back.

13.In the case on hand, admittedly the petitioner divorced her wife / 2nd respondent on 15.11.2005 by an order of court. It is impliedly understandable that the petitioner had no contact or relationship with the 2nd respondent for the past 10 years. If that be so, the 1st respondent has no power to issue summon to the petitioner through his proceedings dated 5.1.2011 to appear on 28.12.2010. Therefore the enquiry to be conducted by the 1st respondent may not be arising at this stage. Therefore I am inclined to quash the notice issued by the 1st respondent.

14.In the result, this criminal original petition is allowed, and the notice Na.Ka.No.4993 /Ku.Va / 2010 dated 28.12.2010 is hereby quashed. Consequently, connected miscellaneous petition is closed. vs

Sd/-

Assistant Registrar (CS)

//True Copy//

Sub Assistant Registrar

To
The Protection Officer,
District Welfare Office,
District Collector's Office Complex,
Singaravelan Maaligai, 8th Floor,
Rajaji Salai, Chennai 600 001.

+1cc to M/s.Uma Vijayakumar, Advocate SR.No. 24297

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and

M.P.No.1 of 2011

A.SK(18/03/2019)